

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
REPLY BRIEF**

ORIGIN AL

To be argued by
PAUL E. KONNEY

76-7338

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

EDWARD M. ALEXANIAN,

Plaintiff-Appellant,

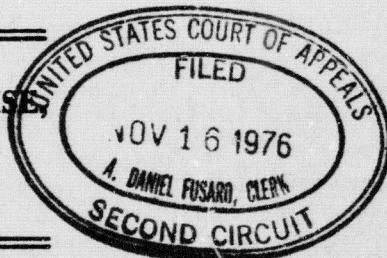
—against—

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLEES DEBEVOISE
PLIMPTON, LYONS & GATES, STANDISH F.
MEDINA, JR. AND JOSEPH H. SCHNABEL



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-7338

EDWARD M. ALEXANIAN,

Plaintiff-Appellant,

-against-

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION, et al.,

Defendants-Appellees.

On Appeal From the United States District
Court for the Southern District of New York

BRIEF FOR DEFENDANTS-APPELLEES DEBEVOISE,
PLIMPTON, LYONS & GATES, STANDISH F.
MEDINA, JR. AND JOSEPH H. SCHNABEL

Preliminary Statement

Plaintiff-appellant, Edward M. Alexanian, appeals from the Memorandum and Order, dated June 18, 1976, of the Honorable Kevin Thomas Duffy, United States District Judge for the Southern District of New York, dismissing Mr. Alexanian's pro se complaint on the ground that "the allegations do not make out any justiciable cause of action." Judge Duffy's Memorandum and Order, which is set forth at page 1A of the Appendix of Decisions annexed to this Brief, is not

officially reported.

Mr. Alexanian's action was dismissed on the basis of formal motions made pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on behalf of the following defendants: (a) the City of New York (the "City") and certain of its employees and officials, (b) the New York State Urban Development Corporation ("UDC") and certain of its employees, and (c) the law firm of Debevoise, Plimpton, Lyons & Gates ("DPL&G"), Standish F. Medina, Jr., a member of the firm, and Joseph H. Schnabel, its managing clerk. This brief is submitted on behalf of DPL&G and Messrs. Medina and Schnabel (the "DPL&G defendants").

Questions Presented

The DPL&G defendants will address themselves in this brief to the following questions:

- (1) Was the District Court correct in holding that "the allegations [of the Complaint] do not make out any justiciable cause of action" where there was no diversity of citizenship between the plaintiff and defendants and where the Complaint, apart from common law tort and contract claims, alleged only that the lower state courts had decided contested issues of fact incorrectly and

had issued interlocutory orders based on purportedly false statements by some of the defendants?

(2) Where plaintiff has unsuccessfully asserted in prior state and federal litigations many of the claims now raised in the Complaint, and where the claims against the DPL&G defendants relate to events and actions which occurred at least three years prior to the filing of the Complaint, are those claims barred by the doctrine of collateral estoppel and by the applicable statutes of limitations?

The DPL&G defendants submit that both questions must be answered in the affirmative. The District Court answered the first question in the affirmative and therefore did not expressly reach the second question.

Statement of the Case*

Mr. Alexanian brought this pro se action in an

* Pursuant to the order of this Court dated September 13, 1976, the appendix to Mr. Alexanian's brief contains only the docket entries in the District Court and the Memorandum and Order of that Court dated June 18, 1976. Thus references in this brief will be made directly to (a) the record, in accordance with Rule 28(e) of the Federal Rules of Appellate Procedure, and (b) the Appendix of Decisions annexed to this Brief, in accordance with Rule 28(f) of the Federal Rules of Appellate Procedure.

attempt to have the federal courts review certain interlocutory orders, issued by the lower New York State courts, which led to his eviction from real property (the "Premises") located in the Bronx. He also sought monetary damages from all those whom he considered responsible, however indirectly, for his eviction. The Complaint named some 47 defendants--including the Governor, the City, plaintiff's own lawyer, a justice of the New York Supreme Court, UDC, the Parks Commission, a number of police officers, the warden of the City jail, and several construction companies--and included charges of breach of contract, fraud, harassment, defamation, theft and denial of due process.

Mr. Alexanian is a resident of the State of New York,* and for a period of time prior to 1973 was the owner and operator of an automobile scrap yard located on the Premises. At all times relevant hereto, the Premises were owned by the City. (Complaint ¶ 5; Medina Affidavit ¶ 3)

Defendant UDC is a corporate governmental agency of the State of New York engaged, among other things, in

* Affidavit of Standish F. Medina, Jr., sworn to May 19, 1976 ("Medina Affidavit"), ¶ 3. Although the complaint in the present action states only that Mr. Alexanian is "a native born American Citizen" (Complaint ¶ 1), Mr. Alexanian alleged in his prior related federal action, "I have resided in the City and State of New York over 55 years continuously." Complaint p. 4, Alexanian v. New York State Urban Development Corp., et al., 72 Civ. 2748 (S.D.N.Y., filed June 28, 1972).

the financing and development of low and middle income housing. In 1969 UDC entered into a memorandum of understanding with the City for the development of a 1,655-unit residential project for low and moderate income families on a site along the Harlem River immediately north of the Premises. At the time the motions to dismiss this action were filed, the project was partially completed and occupied.

(Medina Affidavit ¶ 4)

DPL&G is a law firm with offices at 299 Park Avenue, New York, New York. A number of the partners of the firm, including defendant Medina, are residents of the State of New York. Defendant Schnabel, the managing clerk of DPL&G, is also a resident of New York, as are several other individuals, corporations and governmental entities named as defendants. (Medina Affidavit ¶¶ 1, 5)

Because Mr. Alexanian's description of the action is difficult to understand, the DPL&G defendants have set forth the relevant facts below in greater detail than might ordinarily be required in an appellee's brief.

A. Prior Litigation

Prior to October 1, 1970, Mr. Alexanian had been a holdover tenant on the Premises. On or about that date, the City gave him one month's notice to vacate. Mr. Alexanian

refused to comply with this notice, and the City commenced an eviction proceeding against him in the Civil Court, entitled City of New York v. Alexanian, Index No. L&T 6404/70 (N.Y.C. Civ. Ct., Bronx Co.). (Medina Affidavit ¶ 6)

On or about November 13, 1970, the City leased the Premises to UDC. Although Mr. Alexanian at that time had no right to remain on the Premises, UDC and the City attempted amicably to resolve the problems created by his wrongful occupancy by entering into a written Agreement with him. At the signing of the Agreement, Mr. Alexanian was represented by an attorney who reviewed the Agreement and signed it as Mr. Alexanian's "witness". A copy of the Agreement, dated December 31, 1970 and executed on or about January 15, 1971, is attached to the Medina Affidavit as Exhibit B. (Medina Affidavit ¶ 7)

Pursuant to the Agreement, Mr. Alexanian was permitted to remain on the Premises for another year and a half, but he agreed that he would vacate and remove his property from the Premises by June 30, 1972. In this connection, Section 7 of the Agreement specifically provided, "Mr. Alexanian agrees to remove his property from the Premises by June 30, 1972. Mr. Alexanian grants to UDC, from and after his departure from the Premises, all rights to move, sell or otherwise liquidate any such property

which may remain on the Premises." (Medina Affidavit ¶ 8)

Although Mr. Alexanian was permitted to remain on the Premises for an additional eighteen months, heavy equipment could reach the construction site only by crossing the Premises. Consequently, the Agreement provided that UDC had the immediate right to build an access road along one side of the Premises and to remove the old, one-story office shack that stood in the path of the access road. UDC agreed to replace the old office shack with a new office structure and to make certain monetary payments to Mr. Alexanian. For his part, Mr. Alexanian agreed that judgment could be entered in the pending eviction proceeding, with execution to be stayed until June 30, 1972. (Medina Affidavit ¶ 8) Section 5 of the Agreement thus provided,

"Mr. Alexanian hereby consents that the City shall have final judgment in the action . . . presently pending in the Civil Court of the City of New York, County of Bronx, Index No. L&T 6404/70, and that a warrant or order of possession shall be issued against Mr. Alexanian, as respondent therein, and the City agrees to stay execution of such warrant or order until June 30, 1972."

In accordance with the Agreement, judgment was entered in the eviction proceeding pursuant to a stipulation, dated January 15, 1971. No appeal was taken from that judgment by Mr. Alexanian, and the judgment has long since become final. (Medina Affidavit ¶ 9)

On or about April 15, 1971, Mr. Alexanian and UDC's prime contractor, defendant Leon DeMatteis & Sons, Inc., signed a supplemental agreement which provided, among other things, that the new office would be built "as per sketch to be approved by Mr. Alexanian." (Medina Affidavit ¶ 10)

UDC and its contractor fully honored the terms of the Agreement and the supplemental agreement. The new office was built, and Mr. Alexanian was paid approximately \$14,000 for removal costs. However, Mr. Alexanian refused to give UDC access to the building site. Because Mr. Alexanian's unjustified refusal jeopardized the entire housing project, UDC in July 1971 initiated an action, New York State Urban Development Corp. v. Alexanian, Index No. 14456/71 (Sup. Ct. Bronx Co.) (the "First Bronx Action"), to restrain Mr. Alexanian from interfering with completion of the access roadway and removal of the old office shack. DPL&G acted as UDC's attorneys in connection with the First Bronx Action. Defendant Medina participated in the preparation of certain court papers for UDC and appeared in court from time to time on its behalf. Defendant Schnabel was responsible for arranging the service of papers on Mr. Alexanian or his attorney. (Medina Affidavit ¶ 11)

On July 22, 1971, Justice Charles A. Loreto (who

is himself named as a defendant in this action) issued a preliminary injunction against Mr. Alexanian in the First Bronx Action. Justice Loreto's order, which is set forth at page 2A of the Appendix of Decisions annexed to this Brief and attached to the Medina Affidavit as Exhibit C, contained the following provisions:

- (a) The order enjoined Mr. Alexanian from impeding the completion of the access roadway;
- (b) The order "authorized and permitted" UDC to enter the Premises, to move Mr. Alexanian's belongings from the old to the new office, to demolish the old office, and to finish the access road; and
- (c) The order directed that any claim by Mr. Alexanian for damages allegedly caused by UDC's actions was to be asserted and tried during the September 1971 term of the court.

Although properly served with a copy of Justice Loreto's order, Mr. Alexanian refused to permit UDC or its builder to complete the access roadway. A contempt hearing was held on July 27, 1971, and Justice Loreto found that Mr. Alexanian had willfully and contemptuously violated the provisions of the July 22 order. (Medina Affidavit ¶ 13) Mr. Alexanian thereafter purged himself of his con-

tempt by yielding to the court's mandate, and UDC--after removing the old office shack and its contents from the path of the access route--completed the road on July 27 and 28, 1971. The contents of the old office shack were relocated pursuant to Mr. Alexanian's instructions. No damages occurred, and Mr. Alexanian did not assert any damage claim to be tried during the September 1971 term of the Supreme Court, Bronx County. (Medina Affidavit ¶ 13)

Mr. Alexanian did file a Notice of Appeal from Justice Loreto's order of July 22, 1971. That appeal, however, was never perfected.*

In March 1972--eight months after completion of the access roadway but only a few months before his scheduled eviction from the Premises pursuant to Section 7 of the Agreement--Mr. Alexanian moved to amend his answer in the still pending First Bronx Action. Specifically, he asked the court to permit him to assert two counterclaims: the first counterclaim sought to reform the Agreement (on

* On March 20, 1975, more than three and one-half years after filing his Notice of Appeal, Mr. Alexanian moved for leave to enlarge his time to perfect the appeal. The motion was denied, and the appeal was dismissed by the Appellate Division, First Department, on April 10, 1975. 173(70) N.Y.L.J. (Apr. 11, 1975), p. 2, col. 1 (1st Dep't). (Medina Affidavit ¶ 14)

the ground of fraud) to prevent his eviction, and the second alleged that UDC had caused the damage or loss of his property when it removed the old office shack pursuant to Justice Loreto's order of July 22, 1971. (Medina Affidavit ¶ 15) Justice Loreto denied Mr. Alexanian's motion to amend, holding that,

". . . his belated application to interpose a counterclaim for reformation of the agreement is not made in good faith and seemingly is designed to forestall the final date of his eviction from the premises, to wit June 30, 1972 . . . [I]t strikes the court as a stratagem to be used as a threat and means of delaying and interfering with the orderly progress of the work on the project, thereby presenting the threat of higher costs for its completion . . ." 167(83) N.Y.L.J. (Apr. 28, 1972), p. 18, col. 7 (Sup. Ct. Bronx Co.). (Emphasis added.)

Justice Loreto also held, however, that Mr. Alexanian's time to assert a claim for personal property allegedly damaged by UDC would be extended, and that Mr. Alexanian would be permitted to file a notice of claim and--subject to UDC's right to conduct pretrial examinations--could have an immediate trial. Justice Loreto's decision is set forth at page 7A of the Appendix of Decisions annexed to this Brief, and a copy is attached to the Medina Affidavit as Exhibit D. Shortly thereafter, Mr. Alexanian filed a notice of claim, asserting that UDC had caused the damage, destruction, disappearance or theft in his scrap-

yard of approximately 2,500 items, worth \$100,000. (Medina Affidavit ¶ 15)

UDC sent a formal letter to Mr. Alexanian and his attorney on June 26, 1972, requesting Mr. Alexanian to vacate the Premises and remove his property by June 30, 1972, as required by the Agreement. Mr. Alexanian refused to do so. Instead, on or about June 28, 1972, he commenced a new action against UDC and the City in the State Supreme Court, asking that the Agreement be reformed. Alexanian v. New York State Urban Development Corp., Index No. 14187/72 (Sup. Ct. Bronx Co.) (the "Second Bronx Action").

The Second Bronx Action sought virtually the same relief that Mr. Alexanian had tried to obtain through his motion to amend the complaint in the First Bronx Action, a motion dismissed by Justice Loreto because it was "not made in good faith". Mr. Alexanian immediately moved in the Second Bronx Action for a preliminary injunction restraining the issuance of a warrant of eviction by the Civil Court. That motion was denied by Justice Samuel A. Spiegel on July 12, 1972, for the same reasons Justice Loreto had denied the earlier application. 168(8) N.Y.L.J. (July 13, 1972), p. 10, col. 6 (Sup. Ct. Bronx Co.). Justice Spiegel's decision is set forth at page 10A of the Appendix of Decisions annexed to this Brief, and a copy is attached

to the Medina Affidavit as Exhibit E. (Medina Affidavit ¶ 16)

At the same time that Mr. Alexanian, through his attorney, was instituting the Second Bronx Action and moving for a preliminary injunction, Mr. Alexanian commenced a pro se action against UDC and the City in the United States District Court. Alexanian v. New York State Urban Development Corp., 72 Civ. 2748 (S.D.N.Y., filed June 28, 1972) (the "First Federal Action"). The complaint in the First Federal Action, a copy of which is attached to the Medina Affidavit as Exhibit F, sought nominal damages and injunctive relief, including an order restraining UDC from "legal harrassment to the plaintiff (Alexanian) in the New York State Courts" and directing UDC to "abide by the United States Constitution". Like the Complaint in the case at bar, Mr. Alexanian's pleadings in the First Federal Action alleged that he was coerced into signing the Agreement, that the judgment of eviction in the Civil Court of the City of New York was obtained by duress, that Justice Loreto improperly granted UDC's motion for a preliminary injunction, that the restraining order was improperly served, and that Mr. Alexanian was wrongly denied an opportunity to secure counsel.

On June 29, 1972, Mr. Alexanian appeared ex parte

before the Honorable Charles L. Brieant to ask the District Court to restrain temporarily the issuance of a warrant of eviction by the state court and to grant him other relief. After reading Mr. Alexanian's complaint and listening to his statement of his claims, Judge Brieant denied Mr. Alexanian's application and dismissed the complaint for failure to state a claim upon which relief could be granted. The transcript of Judge Brieant's decision is set forth at page 13A of the Appendix of Decisions annexed to this Brief, and a copy is attached as Exhibit G to the Medina Affidavit. Mr. Alexanian filed an appeal, but this Court affirmed the dismissal on January 22, 1973. This Court's judgment is set forth at page 16A of the Appendix of Decisions annexed to this Brief, and a copy is attached to the Medina Affidavit as Exhibit H. (Medina Affidavit ¶ 17)

UDC, acting through DPL&G as its attorneys, served its answer in the Second Bronx Action on July 13, 1972 and asserted certain counterclaims against Mr. Alexanian. Among other things, UDC requested the issuance of a permanent injunction restraining Mr. Alexanian and his wife from interfering with UDC's use and occupancy of the Premises. (Medina Affidavit ¶ 18)

Having failed to persuade Mr. Alexanian to va-

cate the Premises voluntarily, UDC in October 1972 moved in the Second Bronx Action for a preliminary injunction to restrain Mr. Alexanian from obstructing UDC's immediate use of the Premises. By that time, UDC's project had reached a stage of development at which UDC desperately needed the Premises (which it was leasing from the City) as a staging and storage area. (Medina Affidavit ¶ 19)

Justice Loreto granted UDC's motion for a preliminary injunction on October 27, 1972. His order is set forth at page 18A of the Appendix of Decisions annexed to this Brief, and a copy is attached to the Medina Affidavit as Exhibit I. The order contained the following provisions:

- (a) It enjoined Mr. Alexanian and his wife from "interfering with, disrupting or impeding . . . UDC's immediate possession and use of the Premises";
- (b) It directed Mr. Alexanian and his wife to vacate the Premises "forthwith" and to remove all of their property and belongings within 30 days; and
- (c) It authorized and permitted UDC to enter the Premises immediately and "to move and relocate within the boundaries of the Premises . . . [Mr. Alexanian's] property and belongings in such a manner that the Premises can be used by UDC."

Although Justice Loreto's order was properly served on Mr. Alexanian and his wife on October 30, 1972, they did not comply with its provisions. (Medina Affidavit ¶ 20(1)*)

On November 2 and 3, 1972, a contempt hearing was held before Justice Loreto. DPL&G attended and participated as UDC's attorneys. On November 8, 1972, Justice Loreto signed a Judgment and Final Order upon Contempt Proceedings. (Medina Affidavit ¶ 20(2)*). In the order, Justice Loreto held that,

- (a) The court's order, dated October 27, 1972, had been properly served on Mr. and Mrs. Alexanian, who "willfully and deliberately disobeyed" the provisions of the order;
- (b) The conduct of Mr. Alexanian and his wife and the offenses committed by them were calculated to and actually did prejudice the rights and remedies of UDC;
- (c) Unless Mr. Alexanian vacated the Premises by November 10, 1972, an order of arrest would be executed and Mr. Alexanian would be taken into custody; and

* The Medina Affidavit inadvertently contains two paragraphs numbered 20. The first (at page 9) is referred to as paragraph 20(1); the second (at page 10) is referred to as paragraph 20(2).

(d) If Mr. Alexanian or his wife remained on or returned to the Premises on or after November 10, 1972, UDC was authorized to "enter upon and use the Premises and . . . [to] take whatever lawful action is reasonably necessary to secure access to and use of the Premises at and after that time."

Justice Loreto's order of November 8, 1972 is set forth at page 22A of the Appendix of Decisions annexed to this Brief, and a copy is attached to the Medina Affidavit as Exhibit J. Mr. Alexanian filed, but did not perfect, appeals from Justice Loreto's orders of October 27 and November 8, 1972; he also moved before the Appellate Division for a stay of execution of the orders, but the motion for a stay was denied on November 16, 1972. (Medina Affidavit ¶ 20(2))

Mr. Alexanian refused to vacate the Premises as ordered by Justice Loreto, and on November 20, 1972, Mr. Alexanian was arrested by the Sheriff of the City of New York pursuant to an Order of Commitment issued by Justice Loreto on November 9, 1972. Mr. Alexanian was detained in custody until December 22, 1972, when he was released pursuant to an Order of Conditional Release signed by Justice Loreto. (Medina Affidavit ¶ 22)

As noted above, in the spring of 1972, Justice

Loreto had permitted Mr. Alexanian to file a claim with respect to losses and property damage purportedly suffered by him as a result of actions taken by UDC in July 1971. A copy of Mr. Alexanian's statement of claims is attached to the Medina Affidavit as Exhibit K. Those claims were dismissed on April 6, 1973, after Mr. Alexanian had failed to appear for pre-trial examination on seven different occasions. A judgment was filed on April 27, 1973, dismissing Mr. Alexanian's claims for property damages and awarding costs to UDC. The judgment is set forth at page 26A of the Appendix of Decisions annexed to this Brief, and a copy is attached to the Medina Affidavit as Exhibit L. (Medina Affidavit ¶ 23)

Five months later, on September 12, 1973, Mr. Alexanian moved to vacate the judgment dismissing his damage claims. The motion was denied by Justice Israel Rubin on October 12, 1973, on the ground that Mr. Alexanian "has failed to demonstrate that a meritorious cause exists and fails totally to offer valid justification or excuse for [his] prior defaults and for the delay in seeking the instant relief." 170(74) N.Y.L.J. (Oct. 16, 1973), p. 20, col. 3 (Sup. Ct. Bronx Co.). Justice Rubin's order is set forth at page 28A of the Appendix of Decisions annexed to this Brief. No appeal was taken from the judgment or from

the order denying Mr. Alexanian's motion to vacate. (Medina Affidavit ¶ 23)

B. The Complaint

The Complaint in the present action was filed on December 19, 1975. Mr. Alexanian's application to proceed in forma pauperis was denied at first. However, following Mr. Alexanian's motion for reargument, the District Court granted the application by endorsed memorandum on March 19, 1976. The Complaint was served upon DPL&G and defendant Medina on April 6, 1976. Although a copy of the Complaint was left for defendant Schnabel, he was on vacation at the time and has never been personally served with process. (Medina Affidavit ¶¶ 24-25)

Each of the 28 causes of action alleged in the Complaint is prefaced by a statement identifying the particular defendants against whom that cause of action is asserted. None of the DPL&G defendants is specifically named in any of these prefatory statements. However, the twenty-fourth cause of action is asserted against "ALL THE HERETOFORE FIRST NAMED INDIVIDUALS WHO ARE ATTORNEYS, OFFICERS AND SUPERVISORS OF THE HERETOFORE FIRST NAMED CORPORATIONS, COMPANIES AND ORGANIZATIONS", and thus is arguably broad enough to include DPL&G and the attorneys who

represented UDC in its litigation with Mr. Alexanian. The twenty-fourth cause of action "demands exemplary damages against the aforesaid individual defendants, in the amount of Five Thousand Dollars (\$5,000) from each", and incorporates the allegations contained in the twenty-third cause of action. (Complaint ¶¶ 243-44)

The twenty-third cause of action, in turn, purports to state a claim against defendants other than the DPL&G defendants "FOR CONSPIRACY BY SLANDER AND DEEDS" and, in essence, sets forth the following "facts":

- (a) The Complaint alleges that DPL&G, at UDC's direction, commenced an injunctive proceeding against Mr. Alexanian in July 1971, that DPL&G opposed Mr. Alexanian's applications for an adjournment, and that Justice Loreto granted the injunction without justification. (Complaint ¶ 228)
- (b) The Complaint alleges that at the contempt hearing "on July 27, 1971, by affidavit and oral presentation the words 'DOGS' were used" to suggest that Mr. Alexanian "had vicious dogs caged and, said dogs were vicious and dangerous to the well being of UDC personnel" (Complaint ¶ 229) The Complaint does not gainsay that Mr. Alexanian kept approximately eight German shepherds on the Premises as guard dogs;

nor does Mr. Alexanian ever deny that the dogs were kept on the Premises after July 22, 1971, despite Justice Loreto's order restraining Mr. Alexanian from interfering with construction of the access road. (Medina Affidavit ¶ 27(b))

- (c) The Complaint alleges that unnamed persons in August 1971 and thereafter used the words "squatter" and "gun" to indicate that Mr. Alexanian was a trespasser on the property and was dangerous. (Complaint ¶¶ 230-31, 233) The Complaint does not refute the fact that Mr. Alexanian was a squatter and kept a gun on the Premises. (Medina Affidavit ¶¶ 6, 27(c))
- (d) The Complaint alleges that UDC, for the purpose of destroying Mr. Alexanian's business, obtained the Agreement by fraud, breached its contractual obligations, and repeatedly caused the police to appear at the Premises. (Complaint ¶¶ 232, 234-37)

The twenty-third cause of action concludes with the assertion, in the penultimate paragraph, that

". . . the plaintiff has stayed destroyed by the hands of the UDC, by conspiracy with malice and, each of the other defendants were the contributing factors to the conspiracy, with and/or without intent and, with and/or without malice." (Complaint ¶ 241)

Although none of the remaining 26 causes of action purports to assert a claim against the DPL&G defendants, the Complaint refers at various points to one or more of them. These references, however, merely allude to the fairness of the proceedings in the lower state courts in 1971 and 1972 and to the manner in which UDC sought and obtained relief from those courts. For example, the Complaint alleges that "plaintiff's Civil and Constitutional Rights were violated" by the manner in which a copy of Justice Loreto's order of July 22, 1971 was served (Complaint ¶ 80); that the affidavits served by UDC "contained nothing but fabrications an/or considered perjured affidavits" (Complaint ¶ 109); that Justice Spiegel's "statement of Illustrious Judge Medina [in reference to defendant Medina's grandfather] . . . was cause for disqualification [and] . . . indicates that the Bronx Supreme Court was biased" (Complaint ¶ 123); and that DPL&G "apparently overlooked the self defeating, contradicting affidavits supporting thier motion" (Complaint ¶ 128). (Emphasis in original.) With respect to these allegations, three preliminary observations should be made.

First, virtually all of the points raised by Mr. Alexanian in his Complaint concerning the fairness of the lower state court proceedings and the correctness of the rulings by those courts have been argued by Mr. Alexanian

in those or subsequent proceedings. He has repeatedly asserted that the judges were biased, that he was not permitted enough time, that the Agreement was secured by coercion and fraud, that the affidavits and testimony offered against him were perjured, and so on. Each and every one of these contentions has been rejected, some of them on several occasions.*

Second, no final judgment has been rendered in either the First Bronx Action or the Second Bronx Action, except with respect to Mr. Alexanian's damage claims. Although he has filed numerous notices of appeal from the interlocutory orders about which he complains, Mr. Alexanian has yet to perfect an appeal. Having failed to accomplish his objectives through the lower state courts, Mr. Alexanian now imposes upon the federal courts for the second time by asking them to review the correctness of the state proceedings.

Third, this action is but a continuation and an

* To pick but one example, Mr. Alexanian's contention that UDC coerced him into signing the Agreement was made and rejected in the First Bronx Action (when he opposed UDC's motion for a preliminary injunction in July 1971 and later when he moved to amend his answer to assert a counterclaim for reformation of the Agreement), in the Second Bronx Action (when he moved for a preliminary injunction and thereafter when he opposed UDC's motion for injunctive relief), and in the First Federal Action (where the contention was raised in his pleadings).

extension of the First Federal Action which plaintiff commenced in 1972 and the dismissal of which was affirmed by this Court. There, as here, Mr. Alexanian charged that he was fraudulently coerced into signing the Agreement, that the Civil Court of the City of New York and the Supreme Court of the State of New York rendered improper decisions, and that UDC had no right to reclaim the Premises.

Argument

The DPL&G defendants are aware of this Court's admonitions to the District Courts concerning "premature" disposition of complaints filed by pro se litigants. See, e.g., Lewis v. State of New York, Docket No. 76-2061 (2d Cir. October 27, 1976). It is clear that Judge Duffy was too, because he emphasized in his memorandum decision on defendants' motions that he had

". . . spent many hours reviewing the 293 paragraph document entitled 'Complaint', particularly with a view to interpreting it in the most favorable light since the plaintiff is appearing pro se."

We respectfully submit that, regardless of how liberally Mr. Alexanian's pleadings are read, Judge Duffy was entirely correct in concluding that "the allegations do not make out any justiciable cause of action" against the DPL&G defendants.

I. THE DISTRICT COURT DID NOT HAVE SUBJECT MATTER JURISDICTION OVER THIS LITIGATION, AND PLAINTIFF HAS NOT STATED A CAUSE OF ACTION AGAINST THE DPL&G DEFENDANTS.

Mr. Alexanian is a resident of the State of New York, as are most of the defendants, including Messrs. Medina and Schnabel and a number of DPL&G partners. Therefore, the District Court has no jurisdiction over this action based on diversity of citizenship. See 28 U.S.C. § 1332(a) (1970).

Nor has Mr. Alexanian asserted a claim arising under federal law. See 28 U.S.C. § 1331(a) (1970). To begin with, he seeks at most to recover only \$5,000 from each of the DPL&G defendants (Complaint ¶ 244), and thus has failed to allege the requisite amount in controversy. Moreover, his Complaint--even liberally construed--does no more than assert that the lower state courts have decided contested issues of fact incorrectly, based on allegedly false statements by some of the defendants, and have unjustifiably evicted him from the Premises. However, no final judgment has been rendered in either the First Bronx Action or the Second Bronx Action, and Mr. Alexanian has failed to perfect even those notices of appeal which he did file.

Instead of properly pursuing his remedies in the state courts, Mr. Alexanian has in effect asked the District

Court for the second time to review and set aside the state proceedings and to punish--for fraud, slander, breach of contract, malicious prosecution, theft and property damage--all those who were involved in the state proceedings. This, of course, he cannot do. As Mr. Justice Black emphasized when construing 28 U.S.C. § 2283 in Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 286-87 (1970),

"While the lower federal courts were given certain powers in the 1789 Act, they were not given any power to review directly cases from state courts, and they have not been given such powers since that time. Only the Supreme Court was authorized to review on direct appeal the decisions of state courts. . . . Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court."

Mr. Alexanian's contract and tort claims are not transformed into federal causes of action merely because he laces his pleadings with terms such as "Constitutional Rights, UNDER DUE PROCESS OF LAW" (Complaint ¶ 64) on the assumption that every imagined claim raises questions under the Bill of Rights.* Regardless of the labels he employs,

* The extent to which Mr. Alexanian automatically assumes that every perceived wrong against him necessarily involves a deprivation of his constitutional and civil rights is reflected in his contention [footnote continued]

his objective remains the same: to side-step the litigation pending in the lower state courts and to thrust the federal courts into the middle of long dormant proceedings which have yet to be tried, let alone appealed, in the state courts. Mr. Alexanian "should not be permitted the luxury of federal litigation of issues presented by ongoing state proceedings." Huffman v. Pursue, Ltd., 420 U.S. 592, 605 (1975).

Even if the District Court had jurisdiction over the subject matter of the action (which it did not), Mr. Alexanian manifestly did not state a cause of action against the DPL&G defendants. His twenty-fourth cause of action, which was the only claim arguably asserted against the "attorneys" named in the Complaint, merely alleged that DPL&G moved for a preliminary injunction, opposed his applications for adjournments, and used the words "dogs", "squatter" and "gun" in the court papers which it prepared. No relief can be granted on the basis of such allegations.

Nor has Mr. Alexanian stated an actionable claim against the DPL&G defendants under 42 U.S.C. § 1983 or

[footnote continued] that "Judge K.T. Duffy has denied the appellant his rights under the Constitution for 'due process' by not exploring all the facts before him (Complaint), by accepting the various (parts of) motions as to be truthfull . . ." Pltf's Brief at 27. Judge Duffy, of course, has no more denied Mr. Alexanian his constitutional or civil rights than has any of the DPL&G defendants.

1985 (1970). Even liberally construed, his allegations against the DPL&G defendants relate solely to their role as attorneys in the state court proceedings between Mr. Alexanian and UDC. Privately retained attorneys, however, do not act under color of state law within the meaning of Section 1983. See, e.g., Steward v. Meeker, 459 F.2d 669 (3rd Cir. 1972) (per curiam); Berg v. Cranor, 209 F.2d 567, 568 (9th Cir. 1954). Neither Section 1983 nor Section 1985 "purport[s] to secure a person against unfounded or even malicious claims or suits in state courts, especially . . . when the laws and courts of the state are available and furnish adequate remedies," Curry v. Ragan, 257 F.2d 449, 450 (5th Cir.) (per curiam), cert. denied, 358 U.S. 851 (1958); and neither section provides any basis of liability for slanderous court statements by attorneys, see Heller v. Roberts, 386 F.2d 832 (2d Cir. 1967) (per curiam). See generally Huffman v. Pursue, Ltd., 420 U.S. 592, 605-06 (1975); Powell v. Jarvis, 460 F.2d 551 (2d Cir. 1972).

Finally, we note that process was not served personally on Mr. Schnabel or on a person authorized by him to accept service. Accordingly, the District Court also lacked personal jurisdiction over him. See Rule 4(d)(1) of the Federal Rules of Civil Procedure.

III. PLAINTIFF'S CLAIMS AGAINST EACH OF
THE DPL&G DEFENDANTS ARE BARRED BY
COLLATERAL ESTOPPEL AND BY THE
APPLICABLE STATUTE OF LIMITATIONS.

Even if the District Court had had jurisdiction over the subject matter of the action and even if Mr. Alexanian had stated a cause of action against the DPL&G defendants, the Complaint against them still should have been dismissed on the grounds that his claims were barred by the doctrine of collateral estoppel and by the statute of limitations.

In the course of two state actions and one prior federal action, Mr. Alexanian has on numerous occasions asserted that (a) he was fraudulently induced to sign the Agreement, (b) UDC, its employees and its attorneys submitted false statements and fabricated evidence against him, (c) UDC breached the Agreement, (d) the state court judges were biased and prejudiced against him and should have been disqualified, and (e) UDC and its employees and representatives were responsible for damaging his personal property and for destroying his business. Each time the courts have been faced with these contentions, they have rejected them. Indeed, Mr. Alexanian's claim that his property was damaged by UDC in the summer of 1971 has been dismissed, and final judgment has been entered on that aspect

of the First Bronx Action. Final judgment against Mr. Alexanian also has been entered and affirmed in the First Federal Action. To the extent that the issues raised in the instant Complaint have already been resolved against Mr. Alexanian, collateral estoppel precludes him from re-asserting them now.

The twenty-fourth cause of action against "attorneys" in Mr. Alexanian's complaint incorporates by reference the allegations of the twenty-third cause of action, and thus purports to charge certain defendants with "conspiracy by slander and deeds". To the extent that Mr. Alexanian is claiming that the DPL&G defendants slandered him or caused him property damage in 1971 or 1972 (see Complaint ¶¶ 229, 233), those claims are barred by the applicable statute of limitations. Section 215(3) of the New York Civil Practice Law and Rules requires "an action to recover damages for . . . libel, slander, [or] false words causing special damages" to be brought within one year after the tort, and CPLR 214 requires that "an action to recover damages for an injury to property" be commenced within three years after the injury. This action was not filed until December 19, 1975, by which time both statutes of limitation had run. In addition, even if Mr. Alexanian had alleged a cause of action against the DPL&G defendants under 42 U.S.C. § 1983

or 1985 (which he has not), his claims in this case would be governed by the three-year limitation in CPLR 214(2) for "an action to recover upon a liability . . . created or imposed by statute", and would also be barred. See, e.g., Kaiser v. Cahn, 510 F.2d 282, 284 (2d Cir. 1974); Swan v. Board of Higher Education, 319 F.2d 56, 59 (2d Cir. 1963); Spampinato v. City of New York, 311 F.2d 439 (2d Cir. 1962) (per curiam), cert. denied, 372 U.S. 980 (1963).

Conclusion

The judgment of the District Court granting defendants-appellees' motions pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and dismissing Mr. Alexanian's Complaint should be affirmed.

Dated: New York, New York
November 16, 1976

Respectfully submitted,

Debevoise, Plimpton, Lyons & Gates
For itself and as attorneys for
defendants-appellees Standish F.
Medina, Jr. and Joseph H. Schnabel
299 Park Avenue
New York, New York 10017
(212) 752-6400

Of Counsel:
Standish F. Medina, Jr.
Paul E. Konney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD M. ALEXANIAN,	:	
		Plaintiff,
-against-	:	MEMORANDUM AND ORDER
		75 Civ. 6340
NEW YORK STATE URBAN DEVELOPMENT	:	
CORPORATION, et al.,	:	
		Defendants.
	:	

KEVIN THOMAS DUFFY, D.J.:

Various motions have been made to dismiss the complaint herein. I have spent many hours reviewing the 293 paragraph document entitled "Complaint", particularly with a view to interpreting it in the most favorable light since the plaintiff is appearing pro se. It now appears clear to me that the allegations do not make out any justiciable cause of action.

The action is dismissed.

SO ORDERED.

/s/ Kevin Thomas Duffy
U.S.D.J.

Dated: New York, New York

June 18, 1976

At a Special Term, Part I, of the Supreme Court of the State of New York, County of Bronx, held at the Bronx County Courthouse, 851 Grand Concourse, Bronx, New York, on the 22nd day of July, 1971

PRESENT:

HON. CHARLES A. LORETO

Justice.

NEW YORK STATE URBAN DEVELOPMENT CORPORATION, :
Plaintiff, : Index No.
: 14456-1971
-against- : ORDER
EDWARD ALEXANIAN d/b/a GILFORD
SALES CO., :
Defendant. :

Plaintiff herein having moved, by order to show cause dated July 21, 1971, for a preliminary injunction pursuant to section 6301 of the Civil Practice Law and Rules

(a) restraining and enjoining, during the pendency of this action, the defendant, his wife, assigns, representatives, agents, employees, servants and attorneys, and all persons claiming under them or under their direction and control, from interfering with,

disrupting or impeding (i) the clearing and construction of a roadway approximately 25 feet wide lying parallel and adjacent to the entire eastern boundary of the Premises described in the complaint herein, (ii) the demolition of the structures and removal of any and all property located within 25 feet of such eastern boundary, or (iii) the access to and use of such roadway by the plaintiff and its builders, agents, employees, invitees and assigns,

(b) directing defendant forthwith to vacate the aforesaid structures and to remove, or allow plaintiff or its builders, agents, contractors or employees to remove, his property located within 25 feet of such eastern boundary,

and for such other further and different relief as the Court may deem just and proper in the circumstances,

NOW, upon reading the complaint herein, dated July 21, 1971, and upon reading and filing the affidavit with exhibits attached of William H. Hayden, sworn to July 20, 1971, and the affidavit of Vincent J. Argiro, sworn to July 20, 1971, with proof of due service, all in support of the motion, and [blank in original] all in opposition thereto, and having heard Debevoise, Plimpton, Lyons & Gates, Standish F. Medina, Jr., Esq., of counsel,

attorneys for the plaintiff, and the Office of the Corporation Counsel of the City of New York, Judah Dick, Esq., of counsel, in support of said motion, and having heard plaintiff, appearing pro se, in opposition thereto, and the court having heard the parties on the record and plaintiff having submitted an undertaking in the amount of \$10,000.00, and such undertaking having been approved by the Court, and due deliberations having been had thereon, and it appearing to the satisfaction of the Court that plaintiff and the public will suffer irreparable injury unless the relief requested herein is granted; it is

ORDERED, that defendant Edward Alexanian, his wife, assigns, representatives, agents, employees, servants and attorneys, and all persons claiming under them or under their direction and control, be and they hereby are restrained and enjoined during the pendency of this action from interfering with, disrupting or impeding (i) the clearing and construction of a roadway approximately 25 feet wide lying parallel and adjacent to the entire eastern boundary of the Premises described in the complaint herein, (ii) the demolition of the structures and removal of any and all property located within 25 feet of such eastern boundary, or (iii) the access to and use of such roadway by the plaintiff and its

builders, agents, contractors, employees, invitees and assigns; and it is further

ORDERED, that plaintiff and its builders, agents, contractors and employees (including, without limitation, employees of Leon D. DeMatteis & Sons Inc.) be and they hereby are authorized and permitted on or after July 24, 1971, to enter upon the aforesaid Premises and (i) to enter the aforesaid structures and to remove all property and belongings from said structures and to place them in the newly constructed building described in the complaint herein, (ii) to demolish and remove the structures located within 25 feet of such eastern boundary, (iii) to clear and construct a roadway approximately 25 feet wide lying parallel and adjacent to the entire eastern boundary of the aforesaid Premises, and (iv) to have and enjoy access to and the use of the aforesaid roadway; and it is further

ORDERED, that defendant shall vacate the aforesaid structures and allow plaintiff or its builder, agents, contractors or employees (including, without limitation, employees of Leon D. De Matteis & Sons Inc.) to remove his property located in such structures or otherwise located within 25 feet of such eastern boundary; and it is further

ORDERED, that any claim of damages alleged to have been suffered by the defendant as a result of the plaintiff's actions pursuant to this order, on the plaintiff's application on seven (7) days' notice, setting forth the nature and extent of the claim, will be set on the calendar for hearing during the September, 1971 term of this court.

Copy of this order or the notice of its entry shall be personally made [sic] upon the defendant on July 22, 1971 or failing to do so by leaving a copy thereof firmly affixed to the outer door of the old "office" structure on the Premises described herein on the said date.

ENTER.

/s/ C A L
J.S.C.

NEW YORK LAW JOURNAL

Friday, April 28, 1972, at Page 18

SUPREME COURT - BRONX COUNTY
SPECIAL TERM, PART I

Justice Loreto

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

v. ALEXANIAN -- Defendant seeks multiple relief on this application brought on by order to show cause.

There is no merit to the application to reopen the proceedings which resulted in the issuance of the order of July 22, 1971. Nor is there a proper showing to warrant the issuance of a temporary injunction against the defendant.

In the court's opinion, an examination of the defendant's actions and conduct in this matter as disclosed by the papers submitted and as revealed in the oral hearings had herein before this court, satisfy it that his belated application to interpose a counterclaim for reformation of the agreement is not made in good faith and seemingly is designed to forestall the final date of his eviction from the premises, to wit, June 30, 1972, fixed many months ago.

The court is generally disposed to be liberal in the exercise of its discretion in allowing an amendment

to a pleading. However, it will not grant such relief when the interests of equity and justice point otherwise. The defendant had an attorney representing him in this matter eight months ago, and could have sought and had legal representation long before then. If there were any merit or valid basis for the assertion of a counter-claim for reformation, it could and should have been presented and disposed of before this time. Now it strikes the court as a stratagem to be used as a threat and means of delaying and interfering with the orderly progress of the work on the project, thereby presenting the threat of higher costs for its completion, which plaintiff might hope will serve his purpose to extract an unwarranted settlement.

Finally, with respect to plaintiff's [sic] request to amend his answer to interpose a claim for damages allegedly resulting from the plaintiff's action taken pursuant to this court's order dated July 22, 1971, the court notes that it made provision in the last paragraph of that order for an expeditious presentation, hearing and adjudication of such a claim. Had he taken advantage of that directive, his claim would have been heard last autumn [sic]. Nevertheless, the court will extend to him additional time to prosecute such a claim in the

expeditious manner set forth in that order, in lieu of granting an amendment of the answer for that purpose. Therefore, he is given the opportunity on fifteen days' notice, for setting forth specifically the nature and extent of such a claim for damages, whereupon the matter will be directed to be placed on the May, 1972 calendar for trial.

The motion is disposed of as hereinbefore indicated. Settle order.

SUPREME COURT : BRONX COUNTY
SPECIAL TERM : PART I

-----x

EDWARD ALEXANIAN, doing business as
GILFORD SALES COMPANY,

Plaintiff,

Ind. No.
14187 - 1972

-against-

NEW YORK STATE URBAN DEVELOPMENT
CORP., and THE CITY OF NEW YORK,

Defendants.

-----x

SPIEGEL, J.:

This motion for a temporary injunction restraining the issuance of a warrant in a special proceeding to recover real property instituted in the Civil Court of the City of New York is denied. By written stipulation, plaintiff consented to the entry of judgment in the aforesaid special proceeding whereby defendant City of New York was awarded possession of the real property occupied by plaintiff and execution of the warrant of eviction was stayed until June 30, 1972. At about the same time the stipulation was made, plaintiff entered into an agreement with the New York State Urban Development Corporation (UDC) providing for the terms and conditions under which the premises were to be occupied.

Thereafter, UDC instituted an action to enforce the terms of that agreement, and obtained injunctive relief. On April 19, 1972, plaintiff moved to amend his answer in that action to assert various counterclaims, including a cause of action for reformation of the aforesaid agreement, and, *inter alia*, sought a temporary injunction restraining UDC from interfering with plaintiff's possession of the premises. The plaintiff was denied the right to assert the counterclaim by amending his answer and the court there found that plaintiff's "belated application to interpose a counterclaim for reformation of the agreement is not made in good faith and seemingly to fore-stall the final date of his eviction from the premises, to wit, June 30, 1972, fixed many months ago." (See memorandum decision dated April 25, 1972, in action bearing index number 14459/1971.) The temporary injunction sought on that motion was similarly denied.

On June 29, 1972, this action was instituted. The complaint alleges a cause of action for reformation of the agreement that is substantially identical to the third cause of action which plaintiff was barred from pleading as a counterclaim. Additionally, he now seeks interim injunctive relief staying his eviction from the premises. While the prayer for a temporary injunction

is to stay issuance of a warrant, the effect of granting such relief is to restrain his eviction and provide him with the interim injunctive relief previously denied.

The prior order of May 8, 1972, effectively bars plaintiff from making a successive application upon identical relief (McCall Co. v. Wright, 135 App. Div. 424). Thus, where the new pleading does not allege any new issues, nor proceed on a new theory nor demand new relief, plaintiff cannot obtain the injunctive relief previously denied (Mayor of the City of New York v. Conover, 5 Abb Pr 252). Additionally, the prior motion for a temporary injunction was denied upon the grounds of laches and bad faith. That determination is binding upon the instant identical motion. The temporary stay granted upon the argument of this motion is vacated.

Dated: July 10, 1972.

/s/ S A S
J. S. C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

EDWARD M. ALEXANIAN, doing business
as GILFORD SALES CO. and EDWARD M.
ALEXANIAN, INC.,

Plaintiff,

72 Civ. 2748

-against-

N.Y.S. URBAN DEVELOPMENT CORP., and
CITY OF NEW YORK,

Defendants.

-----x

BEFORE:

HON. CHARLES L. BRIEANT, D. J.

New York, June 29, 1972
12:15 p.m.

APPEARANCES

EDWARD M. ALEXANIAN, pro se.

MR. ALEXANIAN: This, I understand, sir.

THE COURT: And you don't state in your papers or what you have told me, I know you have a grievance here, but you don't state anything that rises to a level of a constitutional right that you have been deprived of, and what you are affected with is the order of a state court, a civil court of the City of New York is a state court.

MR. ALEXANIAN: Yes, sir.

THE COURT: So that under the authority I have quoted to you before, I can make no finding with which would justify me in signing the temporary restraining order that you ask for, or giving you a preliminary injunction against these state people.

These are state officers and employees that you are aggrieved against here. This is a federal court, and your remedy has to be on the state level with your attorney in the state courts. So I can't entertain your application, and I find your complaint here, which I understand you have drawn yourself without a lawyer, but it doesn't state any claim on which relief can be granted in this court. So that I must decline your application, and I am directing that the application for an order to show

cause for a preliminary injunction and temporary restraining order against the New York State Urban Development Corporation and the City of New York be marked denied, and dismissing your complaint for failure to state a claim on which relief can be granted. I am sorry that you have this difficulty with the state government, but I think you'd better go with your lawyer in the state court and get it straightened out.

All right?

MR. ALEXANIAN: What can I say?

THE COURT: Well, I am sorry.

MR. ALEXANIAN: So am I.

THE COURT: But that is what I advise you to do.

MR. ALEXANIAN: I am very sorry also.

THE COURT: Your application must be, and it is denied, and I advise you to go with your attorney and address yourself to the state judicial system with ultimate appeal to the Supreme Court of the United States, if necessary. You have that right. But there is nothing that can be done for you here. That is all there is to it.

...

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 22nd day of January, one thousand nine hundred and seventy-three.

Present: Hon. Henry J. Friendly, Chief Judge
Hon. James L. Oakes
Hon. William H. Timbers,
Circuit Judges

Edward Alexanian d/b/a Gilford Sales Co.,
Appellant

v.

New York State Urban Development Corp.
and The City of New York,
Appellees.

Appeal from the United States District Court
for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued

by counsel for the appellees and by appellant pro se.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the Judgment of said District Court be and it hereby is affirmed because of lack of federal jurisdiction. Appellees' request for attorneys' fees and double costs is denied.

s/ Henry J. Friendly
Hon. Henry J. Friendly, Chief Judge

s/ James L. Oakes
Hon. James L. Oakes

s/ Wm H. Timbers
Hon. William H. Timbers,
Circuit Judges

At a Special Term Part I of the New York Supreme Court held in Bronx County at the Bronx County Building in the City of New York on October 27th, 1972.

Present:

Hon. Charles A. Loreto,
Justice.

----- x
EDWARD ALEXANIAN, d/b/a GILFORD SALES COMPANY, :
Plaintiff, : ORDER
-against- : Index No.
NEW YORK STATE URBAN DEVELOPMENT CORPORATION and THE CITY OF NEW YORK, : 14187/72
Defendants. :
----- x

Defendant New York State Urban Development Corporation ("UDC") herein having moved this Court for a preliminary injunction pursuant to Section 6301 of the Civil Practice Law and Rules

(a) restraining and enjoining, during the pendency of this action, plaintiff, his wife, assigns, representatives, agents, employees, servants and attorneys, and all persons claiming under them or under their direction and control, from interfering with, obstructing or impeding UDC's immediate

possession and use of the Premises described in
the pleadings herein;

- (b) directing plaintiff and his wife forthwith to
vacate the aforesaid Premises;
- (c) authorizing and permitting UDC and its builders,
agents, contractors and employees (including,
without limitation, employees of Leon D. DeMatteis
& Sons, Inc.) forthwith to enter upon the aforesaid
Premises and to move plaintiff's property and be-
longings in such a manner that the Premises can
be used by UDC;
- (d) directing plaintiff within thirty (30) days to re-
move all of his property and belongings now located
on the aforesaid Premises;

and granting such other, further and different relief as
the Court may deem just and proper in the circumstances,

NOW, upon reading and filing the affidavits and
accompanying exhibits of Robert G. Hazen and Nicholas M.
Carozza, sworn to October 3, 1972, and the affidavit of
Judah Dick, Esq., affirmed October 8, 1972, and the letter
of Standish F. Medina, Jr., dated October 12, 1972, with
proof of due service, all in support of the motion, and
upon reading and filing the affidavit of Leslie H. Golden-

thal, Esq., affirmed October 10, 1972, in opposition thereto, and the motion having been duly referred and submitted, and due deliberation having been had thereon, and it appearing to the satisfaction of the Court that defendant UDC will suffer irreparable injury unless the relief requested herein is granted; it is

ORDERED, that plaintiff Edward Alexanian, his wife, assigns, representatives, agents, employees, servants and attorneys, and all persons claiming under them or under their direction and control, be and hereby are restrained from interfering with, disrupting or impeding defendant UDC's immediate possession and use of the Premises described in the pleadings herein; and it is further

ORDERED, that plaintiff Edward Alexanian and his wife be and hereby are directed forthwith to vacate and depart from the aforesaid Premises; and it is further

ORDERED, that defendant UDC and its builders, agents, contractors and employees (including, without limitation, employees of Leon D. DeMatteis & Sons, Inc.) be and they hereby are authorized and permitted forthwith to enter upon the aforesaid Premises and to move and re-

locate within the boundaries of the Premises plaintiff's property and belongings in such a manner that the Premises can be used by UDC; and it is further

ORDERED, that plaintiff Edward Alexanian be and he hereby is directed within thirty (30) days from the date of this Order to remove from the aforesaid Premises all of his property and belongings now located on the Premises.

ENTER

/s/ C A L
J.S.C.

At a Special Term, Part I, of the Supreme Court of the State of New York, County of Bronx, held at the Bronx County Courthouse, 851 Grand Concourse, Bronx, New York, on the 8th day of November, 1972.

PRESENT:

HON. CHARLES A. LORETO,

Justice

----- x

EDWARD ALEXANIAN, d/b/a GILFORD SALES COMPANY,	:	JUDGMENT AND FINAL ORDER UPON CONTEMPT PROCEEDINGS
Plaintiff,	:	
-against-	:	Index No. 14187/72
NEW YORK STATE URBAN DEVELOPMENT CORPORATION and THE CITY OF NEW YORK,	:	
Defendants.	:	

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The defendant New York State Urban Development Corporation ("UDC"), having moved by Order to Show Cause dated October 31, 1972, to punish plaintiff Edward Alexanian and his wife for contempt of this Court for willfully, deliberately and contumaciously disobeying this Court's Order, dated October 27, 1972, and the motion having been brought before the Honorable Charles A. Loreto on November 2 and 3, 1972 at a Special Term, Part I of this Court, held at the Supreme Court of the State of New York, County of Bronx,

and defendant UDC having appeared by Messrs. Debevoise, Plimpton, Lyons & Gates, its attorneys, by Standish F. Medina, Jr., Esq., of counsel, and plaintiff having appeared by his attorney, Leslie H. Goldenthal, Esq., and the Court having read the papers in support of and in opposition to the motion and upon all prior proceedings had herein, and the parties, by their attorneys and witnesses, having been heard on the record, and the Court, after due deliberation, having directed judgment in favor of the defendant UDC and against the plaintiff Edward Alexanian and his wife,

NOW, on motion of Messrs. Debevoise, Plimpton, Lyons & Gates, attorneys for defendant UDC, it is hereby

ORDERED AND ADJUDGED (a) that service of this Court's Order, dated October 27, 1972, was properly made upon plaintiff Edward Alexanian and his wife on October 27, 1972, (b) that plaintiff and his wife had knowledge of the provisions and requirements of said Order, and (c) that plaintiff and his wife are guilty of the misconduct and contempt of Court charged against them in that they willfully and deliberately disobeyed said provisions and requirements; and it is further

ORDERED AND ADJUDGED that the misconduct and

contempt of Court of said plaintiff and his wife, and the offense committed by them, were calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of defendant UDC herein with respect to entry upon and use of property (hereinafter referred to as the "Premises") located approximately between 172nd Street and 176th Street on the Harlem River in Bronx County and consisting of Block 2884, Lot 72; and it is further

ORDERED AND ADJUDGED that an order of arrest shall issue directing the Sheriff of any County of the State of New York to arrest and to take plaintiff into custody in the common jail of the County of such Sheriff, such direction with respect to his wife being withheld subject to further application if necessary and advised; provided, however, that execution of said order of arrest shall be stayed until 11:00 A.M., Friday, November 10, 1972; and it is further

ORDERED AND ADJUDGED that in the event plaintiff or his wife, or both, remain on or return to the Premises at or after 11:00 A.M., November 10, 1972, the aforesaid order shall be executed with respect to such person who shall be arrested and kept in custody in the common jail until (a) the fence surrounding the Premises has been removed, (b) UDC and its builders, agents, con-

tractors and employees have entered upon and have taken possession and gained control of the Premises, and (c) plaintiff and his wife, directly or through their agents, employees, representatives or attorneys, cease impeding, obstructing or interfering with UDC's right to enter upon and use the Premises; and it is further

ORDERED AND ADJUDGED that in the event plaintiff or his wife, or both, remain on or return to the Premises at or after 11:00 A.M., November 10, 1972, and directly or otherwise interfere with, obstruct or impede UDC's right to enter upon and use the premises, said defendant UDC and its builders, agents, contractors and employees (including, without limitation, employees of Leon D. DeMatteis & Sons, Inc.) may enter upon and use the Premises and may take whatever lawful action is reasonably necessary to secure access to and use of the Premises at and after that time.

ENTER.

/s/ C A L
J.S.C.

SUPREME COURT : BRONX COUNTY

----- x : Index No. 14456/1971
NEW YORK STATE URBAN DEVELOPMENT :
CORPORATION, : I.C. III
Plaintiff, :
-against- : JUDGMENT IN FAVOR OF
EDWARD ALEXANIAN d/b/a GILFORD : PLAINTIFF AGAINST
SALES CO., : DEFENDANT DISMISSING
Defendant. : DEFENDANT'S CLAIM
FOR DAMAGES
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Plaintiff, New York State Urban Development Corporation, having duly moved this Court for an order, pursuant to CPLR 3126, dismissing the claim for damages of the defendant, Edward Alexanian, doing business as Gilford Sales Co., and the Court by order dated April 24, 1973 and entered in the Bronx County Clerk's Office on April 25, 1973, having duly granted in all respects plaintiff's said motion to dismiss defendant's claim for damages, and having directed that the Clerk enter judgment herein in favor of plaintiff and against defendant dismissing the Damage Claim filed herein by defendant pursuant to the Order of Mr. Justice Charles A. Loreto dated May 8, 1972, together with the costs and disbursements of this action, it hereby is

ADJUDGED that the Damage Claim filed herein by

defendant pursuant to the Order of Mr. Justice Charles A. Loreto dated May 8, 1972, is dismissed, and is [sic] is further

ADJUDGED that plaintiff, New York State Urban Development Corporation, 1345 Avenue of the Americas, New York, New York 10019, do hereby recover from the defendant, Edward Alexanian, doing business as Gilford Sales Co., 2454 Tiebout Avenue, Bronx, New York 10458, the sum of \$479.50, plaintiff's costs and disbursements of this action, as taxed, and that plaintiff have execution therefor.

Leo Levy
Clerk

Judgment filed this 27th day of April, 1973.

NEW YORK SUPREME COURT -- COUNTY OF BRONX

SPECIAL TERM, PART I.

NYS Urban Dev. Corp. : Index Number 1ⁿ456/71
: Present:
Edward Alexanian d/b/a :
Gilford Sales Co. : HON. ISRAEL RUBIN
: Justice.

Motion for an order vacating prior orders of
the court and restoring the matter to the trial calendar
is denied.

Movant has failed to demonstrate that a meri-
torious cause exists and fails totally to offer valid
justification or excuse for its prior defaults and for
the delay in seeking the instant relief.

Dated 10/12 1973

I R
J.S.C.

AFFIDAVIT OF SERVICE BY MAIL

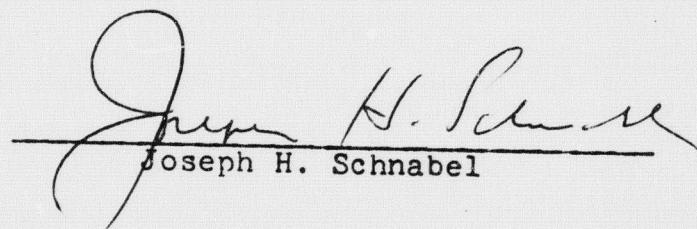
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH H. SCHNABEL, being duly sworn, deposes
and says that:

He is over 18 years of age, and resides at 651
Vanderbilt Street, Brooklyn, New York 11218.

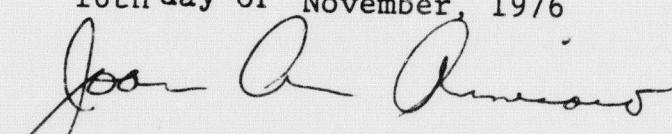
On November 16, 1976, he served the within
Brief

upon the attorneys listed on the annexed Schedule I by caus-
two (2)
ing true copies of same, securely enclosed in postpaid wrap-
pers, to be deposited in an official depository under the
exclusive care and custody of the United States Postal Service
within the State of New York, directed to said attorneys at
the addresses set forth in said Schedule I.



Joseph H. Schnabel

Sworn to before me this
16th day of November, 1976



JOAN ANN ANNICARO
NOTARY PUBLIC, State of New York
No. 52-0123453
Qualified in Suffolk County
Certificate filed in New York County
Term Expires March 30, 1977

TO: Mr. Edward M. Alexanian
Plaintiff Pro Se
c/o Mrs. Jane M. Alexanian
2454 Tiebout Avenue
Bronx, New York 10558

Barrett Smith Schapiro & Simon
Attorneys for Defendants
New York State Urban Development Corporation,
Edward Logue, Robert McCabe, John Burnett,
David Ozerkis, Joseph Fiocca, William Hayden,
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New York, New York 10019

Fredericks and Goldberger
Attorneys for Defendant
Brookfield Auto Wreckers, Inc.
175 Main Street
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Glabman, Rubenstein, Reingold & Rothbart
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Inc. named and sued as Pascap Scrap Iron
32 Court Street
Brooklyn, New York 11201

Mele and Cullen
Attorneys for Defendant Leon D. DeMatteis
& Sons, Inc., Alphonse DeMatties, Allen
Howard, Vincent J. Argiro, Nicholas Carozza,
Cobra Pile Driving Corp., Arcus Concrete
Corp., The DIC Concrete Corporation, DIC -
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Assistant Corporation Counsel
Attorneys for Defendants Sam Gang,
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